REMARKS

This amendment is submitted in response to the outstanding Official Action mailed June 26, 2008. In view of the above claim amendments and the following remarks reconsideration by the Examiner and allowance of the application is respectfully requested.

Claims 1, 9, 13 – 21, 19, 20, 22 and 28 are amended to more particularly point out and distinctly claim the subject matter Applicant regards as the invention. Claims 1, 19, 20 and 28 have been amended to correct incorrect use of hyphens. This does not introduce new matter. In addition Claims 1 and 22 have been amended to clarify that the financing obtained is collateralized by pledging the securities and that the income-producing real estate investments of the second investment portfolio are purchased without any financing collateralized by the income-producing real estate purchased.

The pledging of the securities to collateralize financing is disclosed in the specification at page 14, lines 16 – 17. The purchase of income-producing real estate investments without any financing collateralized by the income-producing real estate is disclosed in the specification at page 10, lines 15 – 18. The amendments to Claims 1 and 22 therefore do not introduce new matter.

Finally, Claims 8 and 13 – 21 have been amended to change "said" to "the" where the Examiner has questioned antecedent basis. Claims 13 – 18 have also been amended to change "said applying step" to "the managing step" to conform with changes previously made to independent Claim 1. This also does not introduce new matter.

Instead, for reasons that are submitted below the claims are believed to be in condition for allowance. The amendments are believed to resolve the concerns raised by the Examiner. Accordingly, reconsideration is respectfully requested.

Turning to the Official Action, the Examiner has objected to Claims 1, 19, 20 and 28 because of incorrect use of hyphenation in several words. Applicant has amended the claims to correct the informalities cited by the Examiner. Reconsideration by the Examiner and withdrawal of this objection is respectfully requested.

Next, the Examiner has rejected Claims 9, 11, and 13-21 under 35 U.S.C. § 112, second paragraph as indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. The Examiner states that the limitations "said controlling step," "said managing step" and "said applying step" have insufficient antecedent basis because the word "step" is not used in the preceding claims. This rejection is respectfully traversed in view of the above claim amendments for the following reasons.

Claim 1, from which Claims 9, 11 and 13-21 depend, recites a "method comprising the *steps* of ... controlling ... and ... managing ... [(emphasis supplied)]." Therefore occurrences of the terms "controlling step" in Claims 9, 19 and 20 relate back to this language in Claim 1 and do not lack antecedent basis. The "managing step" recited in Claim 11, relates back to the "step of managing" recited in Claim 9, and therefore also does not lack antecedent basis. Claims 13 – 19, however, recite an "applying step," the supporting language for which no longer exists in Claim 1. These claims have been amended to recite "managing step," for which such antecedent basis exists in Claim 1 as previously identified.

By amending Claims 9 and 13 – 21 in this manner, this rejection of Claims 9, 11, and 13 – 21 under 35 U.S.C. § 112, second paragraph has thus been overcome. Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

Next the Examiner rejected Claims 1 and 22 under 35 U.S.C. §102(b) as being anticipated by *Use of Property Gains Popularity as Financial Tool* (hereinafter *Property*) on the basis that *Property* discloses all of the elements of Claims 1 and 22 of the instant application. This rejection is respectfully traversed in view of the above amendments to Claims 1 and 22 for the reasons set forth hereinafter.

Property discloses the general concept of the now-discredited Collateralized Mortgage Obligation (CMO) responsible for the downfall since the mailing date of this Official Action of Wall Street institutions previously considered to be invincible. That is, *Property* discloses a transaction in which a cross-collateralized debt structure is used to provide $250 million in debt financing for the $1.1 billion leveraged buyout of a supermarket chain using real estate backed securities based on the supermarkets and warehouses acquired in the buyout. More specifically, Bankers Trust was approached by certain people who

wanted to buyout the existing shareholders using the existing assets of the buyout target. This is property used to buy stocks and stocks used to buy stocks, not pledging securities to obtain financing to buy real estate. The real estate is incidental to this event where with the present invention it is the object and one half of a synergistic management approach where the returns are cross utilized to enhance yield and safety to each asset.

The *Property* scenario is closer to what is commonly referred to today as mezzanine debt on a portfolio of property. This in essence is a simple mortgage lien cross collateralized by the same real estate in two forms, equity in the real estate and debt on the same real estate, even with the ability to substitute property with restrictions any such substitution is after the fact. It has nothing whatsoever to do with asset allocations within an investment portfolio where each asset class is managed to protect the other. Last, upon satisfaction of this debt, all the benefits of ownership inure back to the owner in fee simple, after said debt is satisfied. These are not small differences.

Claims 1 and 22 have been amended to clarify that the presently claimed method does not contemplate such a transaction. The presently claimed method does not use such risky cross-collateralization. Thus, Claims 1 and 22 have been amended to recite that the income-producing real estate investments of the second investment portfolio are purchased without any financing collateralized by the income-producing real estate purchased. Because the securities pledged are not collateralized by the real estate they are being used to purchase, Claims 1 and 22 are not anticipated by *Property*.

Claims 1 and 22 are also not obvious in view of *Property* under 35 U.S.C. §103(a). *Property* requires the use of cross-collateralization and teaches against financing the purchase of income-producing real estate investments by pledging securities that are not backed by collateralization of the real estate investments they are being used to purchase. Significantly, *Property* also teaches against the pledging of CMO portfolios that are secured by properties outside the second portfolio, stating, "each of the 40 supermarkets and 3 warehouses included in the overall collateral package stands a surety against default by any one property." In other words, the only acceptable collateralization is cross-collateralization,, which is expressly excluded by the claims as amended.

By amending Claims 1 and 22 to exclude the use of financing collateralized by the real estate being purchased, which excludes pledging real estate backed securities secured by the real estate being purchased, this rejection of Claims 1 and 22 as anticipated by *Property* under 35 U.S.C. §102(b) has thus been overcome. Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

Finally the Examiner rejected Claims 3– 4, 8, 9, 11– 21, 24, 25, 28, 29 and 43–47 under 35 U.S.C. §103(a) as being unpatentable over *Property* in view of *Evolution of Canadian Credit Markets* (hereinafter *Evolution*). The Examiner acknowledged that the features of Claims 3– 4, 8, 9, 11– 21, 24, 25, 28, 29 and 43– 47 were not taught or suggested by *Property* but cited *Evolution* as teaching this. Specifically, the Examiner considered the present claims to encompass CDOs and other cross-collateralized investment vehicles. This rejection is respectfully traversed in view of the above claim amendments for the following reasons.

To begin with, *Evolution* was published in Spring 2001 and the present application claims priority back to Provisional Applications filed in August 2000 and January 2001. Thus, the publication itself is not prior art against the present application. While the publication may describe activities that may have taken place before Spring 2001, the activities in question occurred in Canada and do not establish that the present invention was "known or used by others in this country" pursuant to 35 U.S.C. §102(a).

Regardless, the teachings of *Evolution* are cumulative to *Property* and simply disclose some of the details of the dependent claims as applied to CMOs, CDOs, etc. However, such investment vehicles are expressly excluded by the amendments to Claims 1 and 22. The present invention does not cover, and never was intended to cover, cross-collateralized investments. The amendments to Claims 1 and 22 have been made to emphasize this.

Claims 3– 4, 8, 9, 11– 21, 24, 25, 28, 29 and 43– 47 depend directly and indirectly from either Claim 1 or Claim 22 and, as such, incorporate the features of Claims 1 and 22 that patentably define over *Property*, specifically, the purchasing of income-producing real estate investments for the second investment portfolio without any financing collateralized by the income-producing real estate purchased. This advantageous feature missing from *Property* is neither taught nor suggested by *Evolution*. *Evolution* likewise teaches against the presently

claimed invention by teaching cross-collateralized investment vehicles to the exclusion of other forms of investment management utilizing both securities and income-producing real estate.

There is thus no teaching or suggestion in either *Property* or *Evolution* of asset allocations between two investment portfolio where the asset class within each portfolio is managed to protect the other without cross-collateralization, nor the advantages over cross-collateralized investments obtained therefrom. This can only be learned by reading the present specification.

Thus amending Claims 1 and 22 to exclude the use of financing collateralized by the real estate being purchased, which excludes pledging real estate backed securities secured by the real estate being purchased also patentably defines over the combined teachings of *Property* and *Evolution* as applied to Claims 3 – 4, 8, 9, 11 – 21, 24, 25, 28, 29 and 43 – 47. By amending Claims 1 and 22 to exclude cross-collateralized real estate backed investments, this rejection of Claims 3– 4, 8, 9, 11– 21, 24, 25, 28, 29 and 43– 47 under 35 U.S.C. §103(a) as unpatentable over *Property* in view of *Evolution* has thus been overcome. Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

In view of the above amendments and remarks, this application is now believed to be in condition for allowance. Reconsideration is, therefore, respectfully requested. However, the Examiner is requested to telephone the undersigned if there are any remaining issues in this application to be resolved.

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicant's Deposit Account No. 50-1943 therefor.

Respectfully submitted,

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